In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 991

EDWARD M. CLARIDGE AND KAY T. CLARIDGE,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1–3) is reported at 416 F. 2d 933. The opinion of the district court (Pet. App. 3–12) is reported at 279 F. Supp. 87.

JURISDICTION

The judgment of the court of appeals was entered on September 19, 1969 (Pet. App. 1). The petition for a writ of certiorari was filed on December 18, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, for purposes of determining ownership of land claimed by the United States, the bed of a navigable stream includes the area inundated by water for short periods of time each year during the time of highest flow of the river.

STATEMENT

The land involved in this quiet title action filed by the United States is in the Arizona portion of the Palo Verde Valley, about one-fourth of a mile east of the present bank of the channel of the Colorado River.

The valley is about fifteen miles from north to south and at the point in question is about eight miles wide. The floor of the valley consists of alluvial soil deposited by the river as it meandered across the valley and eroded from the Arizona bluff on the east and the California bluff on the west. The area was acquired by the United States from Mexico in 1848 under the Treaty of Guadalupe Hidalgo, 9 Stat. 922. Pursuant to the Act of June 17, 1902, 32 Stat. 388, all public lands within six miles east of the ordinary high water mark of the Colorado River were withdrawn by Executive Orders of January 31, 1903, and February 19, 1929, including the instant land insofar as it is east of the ordinary high water mark.

The Colorado River at this point is a navigable stream and the State of Arizona holds title to the land under the river from the thread to the easterly ordinary high water mark. *State of Arizona* v. *State of California,* 283 U.S. 423.

The Colorado River had been, at peak flow, a turbulent river carrying large quantities of water containing much silt and alluvion. Its meanderings had been principally on the Arizona side. In 1935, the gates of the Hoover Dam upstream from this property were closed,[1] and since then the river has been relatively stabilized to flow in its present position.

After a lengthy trial, in which evidence was presented as to the meandering of the river over a 90-year period (1874 to 1964), the trial court determined that the meandering had been gradual and that the land alternatively submerged and exposed had resulted from an accretive process. Accordingly, it concluded that although the present high water mark exists because of the construction of the Hoover and other dams upstream, the lands were established by accretion or reliction from the action of the Colorado River, or by both, and were accreted to or relicted to lands owned by the United States, withdrawn from entry by lawful action of the United States in 1903 and 1929; and finally that the title thereto is presently in the United States (Pet. App. 11). The court of appeals affirmed, stating (Pet. App. 3):

> The District Court was * * * not in error in ruling that a precise location of the high water mark at the time of Arizona's statehood was unnecessary. While the river unquestionably has meandered through the valley since that time, any change in its course has resulted from gradual erosion and not from avulsion,

[1] The Hoover Dam was constructed pursuant to the Boulder Canyon Project Act of 1928, 43 U.S.C. 617.

and the resulting accertion passes to the United States as riparian owner. Whether the Hoover Dam affected the course of the river is of no significance, for it did not result in avulsive changes and it was not constructed for the purpose of reducing riverbed holdings.

ARGUMENT

The decision of the court of appeals is correct and presents no conflict with decisions of other courts of appeals or other question warranting review by this Court. It is undisputed that the United States was the original owner of this area of Arizona and no patents have been issued. Petitioners' claim is that the land in question is within the bed, *i.e.*, the high water mark, of the Colorado River (Pet. 4–6) or that the construction of the Hoover Dam transferred title to them by precluding future meanderings of the river (Pet. 6–9). This claim was properly rejected by the courts below. It is settled law that the term "high water mark" of a navigable river does not include those areas flooded each year by the spring freshets and most assuredly does not include the bluff to bluff theory here espoused by petitioners. *Oklahoma* v. *Texas,* 260 U.S. 606.

It follows that, for purposes of the present litigation, whether the stoppage of this natural accretive process was caused or controlled by the construction and operation of a dam as a part of a federal project for the general public benefit is of no significance. *Beaver* v. *United States,* 350 F. 2d 4 (C.A. 9).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.
SHIRO KASHIWA,
Assistant Attorney General.
S. BILLINGSLEY HILL,
EDMUND B. CLARK,
Attorneys.

FEBRUARY 1970.

U.S. GOVERNMENT PRINTING OFFICE: 1970